

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

EC/229/2015
MANOJ KUMAR TODI
VS
M/S BICHITRA & ORS.

BEFORE:

The Hon'ble JUSTICE RAVI KRISHAN KAPUR

Date : 13th March, 2024.

Appearance:
Mr. Arif Ali, Adv.
Mr. Vivek Kumar Saha, Adv.
...for the decree-holder.

The Court: This is an application for execution of a decree dated 6 February, 2013. By the decree, the judgment-debtors have been directed to pay a sum of Rs.77,46,564/- with interest @15% per annum from 22 October, 2009 till 6 February, 2013 and, thereafter, @8% per annum on Rs.77,46,564/- from 7 February, 2013 till payment of the entire decretal dues.

During the pendency of this application, the judgment-debtors had paid a sum of Rs.9 lakhs and Rs.5 lakhs respectively.

Pursuant to orders of Court, the parties were requested to settle the matter. By an order dated 5 September, 2023 the disputes between the parties were finally settled and the parties agreed that an additional amount of Rs.40 lakhs be paid in full and final satisfaction of the decretal dues. In this background, the judgment-debtors were directed to make the following payments:

Date	Amount to be paid
By 20 th September, 2023	Rs.6,00,000/-
By 20 th October, 2023	Rs.6,00,000/-
By 20 th November, 2023	Rs.6,00,000/-
By 20 th December, 2023	Rs.6,00,000/-
By 20 th January, 2024	Rs.6,00,000/-
By 20 th February, 2024	Rs.5,00,000/-
By 20 th March, 2024	Rs.5,00,000/-
Total	Rs.40,00,000/-

Pursuant to the aforesaid, the entire amount of Rs.40 lakhs has been paid in the following manner:

Date	Amount
20 th November, 2023	Rs.18,00,000/-
16 th December, 2023	Rs.7,00,000/-
15 th January, 2024	Rs.7,00,000/-
12 th February, 2024	Rs.50,000/-
15 th February, 2024	Rs.7,50,000/-
Total	Rs.40,00,000/-

Subsequent to the order dated 5 September, 2023, there had also been a change of Advocates appearing on behalf of the decree-holder. The decree-holder now submits that the amount of Rs.40 lakhs in full and final settlement of the decretal dues is unacceptable. It is also submitted by the decree-holder that in view of the defaults committed by the judgment-debtors, in paying the installments within the original stipulated time period in terms of the order dated 5 September, 2023, the decree-holder is entitled to claim the entire decretal dues.

Significantly, both the payments in terms of the order dated 5 September, 2023 for Rs.6 lakhs each payable on 20 September, 2023 and 20 October, 2023 respectively were returned with the remark 'Advice not Received' and not with the remark 'Insufficient Funds'. It is submitted on behalf of the judgment-debtors that in view of the extant Guidelines issued by the Reserve Bank of India, there was an inadvertent error in submitting the cheques for the month of September 2023 and

October 2023 and that is the reason why those cheques were not encashed on the due dates. In any event, upon receipt of notice of the same by letters dated 16 November, 2023 and 17 November, 2023 respectively, the judgment-debtors had handed over two separate demand drafts of Rs.9 lakhs each both dated 20 November, 2023 which were encashed and appropriated by the decree-holder.

By an order dated 1 December, 2023, this Court had also directed the judgment-debtors to pay an increased instalment amount. In such circumstances, the judgment debtor has paid the entirety of the sum of Rs.40 lakhs and had also increased the original installment amount in view of the delayed payment.

There is no challenge to the order dated 5 December 2023. The change of Advocates of the decree holder during the course of the proceedings does not give the decree holder any right to wriggle out of the consent recorded in the order dated 5 September, 2023. The challenge to the original settled amount of Rs.40,00,000/- is also belated and an afterthought. The decree holder after having received the entirety of the Rs.40 lakhs is now trying to reopen the decree and seeks payment of the entire decretal dues. The parties had unequivocally agreed to crystallize the decretal dues at Rs.40 lakhs. The order dated 5 September, 2023 was passed in the presence of the parties and their Advocates. The delay on the part of the decree holder in making payment of the initial installments is also inadvertent and without any dishonest intent. Thereafter, the judgment debtors had also increased the original amount of Rs.6 lakhs to Rs.9 lakhs and paid the entire sum of Rs.18 lakhs by 20 November, 2023.

In view of the aforesaid, there has been full and final satisfaction of the decretal dues. The judgment debtors have paid the entire amount of Rs.40 lakhs.

The decree holder has received the same. There is no merit in the objections taken by the decree holder.

All interim orders, stand vacated. The decree holder is directed to take necessary steps in respect of the pending criminal proceedings filed against the judgment debtor in terms of the order dated 5 September, 2023. In default, liberty to apply.

In view of the aforesaid, EC/229/2015 is disposed of by recording satisfaction of the decree dated 6 February, 2013.

(RAVI KRISHAN KAPUR, J.)